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93-24 /

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**WJB-TV FT. PIERCE LIMITED PARTNERSHIP**

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Before the

## FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Washington, DC 20554

In re:

Amendment of Part 74 of the  
Commission's Rules with Regard  
to the Instructional Television  
Fixed Service

MM Docket No. 93-24

**COMMENTS OF WJB-TV LIMITED PARTNERSHIP**

WJB-TV Limited Partnership ("WJB") submits these initial comments in response to the Notice of Proposed Rulemaking in MM Docket No. 93-21 (the "Notice"). This docket proposes to modify certain of the procedural rules regarding the processing of applications for stations in the Instructional Television Fixed Service ("ITFS").

WJB is the general partner of the operator of a wireless cable television system in Ft. Pierce, Florida and the developer of a similar system in Melbourne, Florida.<sup>1</sup> The Ft. Pierce system currently has over five thousand subscribers, despite being in business for less than a year. The Melbourne system is expected to begin operations later this year. In addition, WJB and its affiliates are actively investigating several other opportunities in the wireless cable business.

<sup>1</sup> The WJB entities do business under the name "Coastal Wireless Cable Television" pursuant to a Certificate of Assumed Name filed with the Florida Secretary of State.

### Background

There is no denying that the popularity of wireless cable television has mushroomed in recent years. In fact, dozens of wireless systems are now up and operating, including WJB's system in Ft. Pierce. These systems provide a source of video programming to thousands of customers nationwide and represent one of the few sources of competition to traditional cable television.

In order to successfully compete with entrenched cable systems, however, wireless systems must offer a sufficient number of channels of programming to potential subscribers. In fact, in WJB's experience, the lack of sufficient channel capacity is the greatest obstacle to the development of a wireless system. In most markets, a system consisting only of the so-called commercial channels (i.e., the MDS channels) simply cannot compete; customers want more than eight, eleven or even thirteen channels of programming.

To obtain the necessary number of channels, virtually all wireless systems must lease excess capacity on ITFS channels from the educators who are the licensees of the underlying stations. Through such lease agreements, systems can acquire up to twenty additional channels of programming, albeit on a part-time basis. These channels, when combined with the commercial channels, allow the system to provide a competitive product.

Such arrangements are mutually-beneficial to wireless operators and educators; the operator receives the additional channel capacity, while the educator typically receives

construction grants, continuing royalty payments, and operational and technical assistance. In fact, many educators simply could not afford to construct and operate their ITFS systems without the assistance of wireless operators.

WJB's experience with ITFS

To date, WJB has entered into contracts to lease excess channel capacity on a total of forty ITFS channels. Its lessors include a variety of educators, including a state university, community colleges, a school district, and several private schools. These arrangements have created partnerships that have benefitted both students and subscribers.

WJB's contract with the School Board of St. Lucie County provides an example of the benefits that can arise from such an arrangement. The School Board serves thousands of public school students from kindergarten level through high school. Like most school systems in Florida, it does not receive all of the funding as would be ideal.

WJB paid for the construction of the School Board's two ITFS stations. It also pays a continuing monthly royalty for the part-time use of the channels. It also provides antennas to the

programs using royalties paid by WJB. Finally, it is able to offer after-school programming which is written, directed, and produced by students; one of these shows, which is entitled "Homework Hotline," allows students to telephone specific questions regarding their homework and studies to a panel of teachers, who answer the questions over the air for the benefits of all viewers.

WJB, as a developer of a wireless cable systems and a benefactor of several ITFS licensees, has an obvious interest in this proceeding. It will address its comments to several issues raised in the Notice.

A. The Freeze on Applications

WJB's biggest initial concern regarding the Notice is the freeze on the filing of new applications. In a nutshell, the freeze will stagnate the growth of ITFS. As the Commission has noted, most of the newer ITFS applications are sponsored by wireless operators such as WJB. In fact, it is no secret that many ITFS applicants and licensees simply could not afford to construct and operate their stations without this assistance.

By halting the filing of new applications, the freeze will jeopardize the future private funding of new ITFS stations. Potential developers of such systems, uncertain of when the freeze will be lifted and construction can commence, will simply look toward alternative investments for their capital. In short, money that would have gone towards the development of ITFS systems for educational entities will be lost to other ventures. When the

freeze is lifted, some educators will likely find themselves having to fund the construction and operation of their stations themselves.

The freeze will also have a trickle-down effect on unbuilt authorizations. Wireless operators who have not assembled sufficient capacity in a particular market will be hesitant to expend any construction funds on authorized stations until the freeze is lifted and additional channels are made available. In all likelihood, some authorizations that would have built will simply lapse. Again, the losers will be the educators.

The freeze is a serious concern because of the uncertainty surrounding its length. The Notice refers to a "short" freeze. See Paragraph 9 of the Notice. Unfortunately, it appears that this process may not prove to be a "short" one; paragraph one of the Notice indicates that it will extend "during the pendency of this proposed rulemaking." See Paragraph 1 of the Notice. Reply Comments are due in middle of May, and an Order will presumably be released several weeks afterward. Once the procedural issues are resolved, the Commission intends to give "no fewer than 60 days or some longer period" before opening the first filing window. All in all, it appears possible that new and outstanding ITFS applications will not be processed before sometime in 1994.

From the standpoint of wireless cable operators, this scenario poses a serious problem. Those operators who have expended hundreds of thousands of dollars but whose lessors have not yet filed applications for a sufficient number of channels (or

whose applications are not yet on a cut-off list) must sit idly for several months. Successful operators who desire to develop additional markets (such as WJB) are similarly stranded. Consequently, the enthusiasm for developing wireless cable systems, as well as the necessary capital, are likely to be directed elsewhere. In short, the freeze could result in a serious blow to the development of the entire wireless cable industry.

More importantly to this proceeding, it is critical to realize that these negative effects will extend to the educational community. Over and over again, WJB's ITFS lessors have cited tight budgets and funding cutbacks as creating an immediate need for ITFS capacity. In many cases, these stations allow instructors to simultaneously reach additional students and remote campuses, all at a reasonable cost. Best of all, the enormous cost of constructing and operating these stations is virtually always borne by the wireless system.

To the extent that the freeze discourages wireless investment and development, it will adversely affect the many educators who depend on wireless operators. In other words, these educators, whose budgets are tighter than ever, may now have to pay for their ITFS stations themselves.


#### **B. Processing of Applications**

WJB understands the difficulties that have resulted to the Commission staff from having to process hundreds of



applications. Undoubtedly, this is a difficult and thankless task.

It is ironic that the problem arises in large part because of the success of ITFS and the benefits that have arisen through commercial partnerships. The Commission should not lose



applicants. The result is typically a slew of petitions to deny and a comparative evaluation of mutually-exclusive applications, all of which ultimately exhaust the Commission's limited time and resources.

This situation creates a score of problems to educational entities that legitimately desire the use of ITFS channels. First, for those entities who contract with the warehouseers, they often find - after a considerable delay - that their lessee lacks both the resources and the inclination to construct their station. Second, and often more serious, because the warehouseers often enlist dubious entities to apply for the stations, legitimate educators sometimes find that their applications are mutually-exclusive and, at best, cannot be granted except after a considerable delay. Finally, when huge amounts of the Commission's resources are wasted by the antics of the warehouseers, the processing of legitimate applications is inevitably slowed.

WJB believes that the solution to the backlog problem is not to discourage applications, but to deter the activities of those who repeatedly abuse the process. In the past, the Commission has returned deficient applicants and forfeited unbuilt authorizations involving these groups; unfortunately, the application itself, as well as the unbuilt authorization, possesses a "nuisance value" in that it prevents a legitimate applicant from obtaining the use of the spectrum until the return or forfeiture occurs. Furthermore, the mere review and return of such applications wastes the Commission's time and resources. Thus, to

effectively deal with the underlying problem, it is critical that such filings be discouraged altogether.

To deal with the problem, WJB proposes that the

be required to post five separate letters of credit. This requirement would eliminate one alleged abuse in the industry, namely that of one or more entities who have sponsored scores of applications, but who have the ability and intent to construct only a few, if any, of the underlying stations.

C. Use of Filing Windows

WJB commends the Commission for seeking to "control the flow of applications better, thereby significantly improving processing efficiency." See Paragraph 7 of the Notice. However, it questions whether the use of filing windows will accomplish this objective. More importantly, it fears that the use of filing windows will adversely affect many of the educational entities who would otherwise benefit from ITFS installations.

Unfortunately, it is difficult to comment on the filing window concept, as the Notice gives few details of how the process would work. WJB assumes that whenever a given window is opened, all applications received during the period of the window will be processed at once. If more than one applicant applies for the same channels in the same market during the same window, a comparative analysis would be conducted. Alternatively, the Commission may be planning to assign certain markets to specific windows. Presumably, with the intention of benefitting the most potential users while controlling the quantity of applications, the first window would include a handful of the largest markets; smaller markets would be included in subsequent windows, some of which may

not be opened for several years. WJB believes that either of these approaches will result in adverse consequences to many ITFS hopefuls, as well as the Commission.

If the former approach is adopted, WJB believes that it will result in an even greater abuse of the following process. When the first filing window approaches, legitimate operators such as WJB will face a critical choice - either they pound the pavement to find applicants for every channel group in every market that they wish to develop or they risk the possibility that a warehouser could sponsor an application on one of these groups and then use the channels to extract a payment. Thus, prudent operators - as well as educators - would be motivated to file in the initial window, a situation that could lead to a slew of hastily-prepared applications.

If the latter approach is adopted, WJB believes that the Commission needs to develop a mechanism of identifying those markets that should be included in the initial windows. For example, there are many smaller markets where educators are seeking channels and have funds available for construction. There are likely large markets where channels are not being sought or construction funds do not exist. In such situations, it is only logical that the applications of the former be processed first.

The situation in Ft. Pierce illustrates this point. According to the United States Department of Commerce, Ft. Pierce has a population of less than 250,000 people; indeed there are nineteen metropolitan statistical areas in the state of Florida

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alone that are larger. Had its JTFS channels been allocated